IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 832/2004
(Habiburehman & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 13/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Shreedhar Purohit for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. R.S.Rathore for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have assailed the order dated 12.04.2004 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Merta (for short 'the revisional court' hereinafter) in Criminal Revision No. 28/03 (48/02) whereby the revisional court set aside the order dated 30.9.2002 passed by Judicial Magistrate, Merta (for short 'the trial court' hereinafter) refusing to take cognizance of the offence and remanded the matter to the trial court to decide it afresh in the light of certain authorities cited.

I have heard learned counsel for the parties. Perused the orders of both the courts below.

It appears that on a first information report lodged

by non-petitioner No.2, police, after investigation filed a negative final report. Thereafter a protest petition was filed by the complainant and the trial court recorded the statements under Section 200 and 202 Cr.P.C. and thereafter took the cognizance of the offence against the petitioners. That order came to be challenged by the petitioners before this Court by way of criminal misc. petition No.112/01 and six others which came to be decided by the order dated 27.7.2001 and the matter was remanded to the trial court for further inquiry observing that such further inquiry may be held as may be thought proper by the learned magistrate i.e. whether to record more evidence, or to get the matter further investigated, and then to come to the conclusion, as to whether any offence is made out, if so against whom, and if learned magistrate finds the requirements of sec. 204 to be fulfilled then he may proceed further, otherwise, he may proceed u/s 203 Cr.P.C. Since the matter relates to the year 1998, the learned Magistrate is directed to expeditiously come to the logical conclusion.

Thereafter, the trial court sent the matter to the police for investigation and police again filed negative final report which was accepted by the trial court. That order came to the challenged by the non-petitioner before revisional court and revisional court remanded the matter, that is how, the matter came to before this Court.

It is contended by the learned counsel for the non-petitioner complainant that the matter was again investigated in compliance of order of this Court but the police did not record his statement again, though earlier the police recorded the statements of non-petitioner and three witnesses. It appears that the matter has been investigated again and again and non-petitioner complainant has already been heard by notice as also his protest petition has been entertained. Thereafter the trial court prima-facie did not find case against the petitioners.

In my view, the order of the revisional court cannot be said to be in conformity with the order passed by this Court in criminal misc. petition. The matter has been investigated by the police and therefore, there was no occasion for the revisional court to remand the matter again and give certain directions. The directions given by the revisional court appear to be unwarranted.

In the circumstances, therefore, the order impugned dated 12.4.2004 cannot be sustained and deserves to be set aside.

Consequently, the petition is allowed. The order impugned dated 12.4.2004 passed by revisional court is set aside.

(H.R.PANWAR),J.

Rp